

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0193
Sales/Use Tax
For the Years 1998, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Exemptions

Authority: Ind. Code § 6-2.5-8-8.

Taxpayer protests the assessment of sales and use tax with respect to sales made to several customers Taxpayer believed were not subject to sales and use tax.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a seller of computer software, particularly anti-virus and security software. During the taxable years in question, taxpayer did not remit sales tax with respect to several purchases that taxpayer claimed were exempt for Indiana sales tax. During the course of audit, taxpayer was unable to provide exemption certificates or special exemption certificates for two customers. Audit assessed additional sales tax and penalty, and taxpayer filed a protest of tax with respect to two customers, and penalty with respect to the entire assessment.

I. Sales and Use Tax-Exemptions

DISCUSSION

Taxpayer protests the imposition of sales/use tax with respect to two vendors that taxpayer maintains are exempt from sales tax. Taxpayer has not provided a copy of the exemption certificates, required under Ind. Code § 6-2.5-8-8, and accordingly the protest must be denied.

FINDING

Taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10%) negligence penalty for all taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has failed to provide sales tax exemption certificates for the customers in controversy. The simple step of ensuring that taxpayer or customer provides an exemption certificate is a statutory requirement prior to conducting a potentially taxable transaction. Taxpayer has failed to meet the appropriate standard of care expected of a taxpayer.

FINDING

Taxpayer's protest is denied.

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